

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MJ MELO PAINTING, LTD.
Employer

and

Case 29-RC-279096

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS LOCAL 1430
Petitioner

ORDER

The Petitioner's Request for Review of the Acting Regional Director's Decision on Challenges and Objections and Direction of Second Election is granted as it raises a substantial issue warranting review solely with respect to whether a rerun election should be directed without resolving the challenged ballots.

Here, the Tally of Ballots revealed seven votes cast in favor of the Petitioner, five votes against representation, one void ballot, and four challenged ballots. We agree with the Acting Regional Director that the improper commingling and counting of two ballots contained in unsigned yellow envelopes, along with the failure to count a misplaced ballot that was timely received before the count, would require setting aside the election should those three ballots prove determinative. See *T & G Manufacturing, Inc.*, 173 NLRB 1503, 1504 (1969); *New York Telephone Co.*, 109 NLRB 788, 790-791 (1954).

However, the two improperly commingled ballots and the misplaced ballot may *not* be determinative, depending on the outcome of the four challenged ballots. If two or more challenges are overruled, the Petitioner may yet receive enough votes that the improperly commingled and misplaced ballots could not possibly change the outcome of the election. Under such circumstances, it would not be necessary to set aside the election. See *J. C. Brock Corp.*, 318 NLRB 403, 404 (1995) (finding that Board agent misconduct did not raise a reasonable doubt about the fairness and validity of the election where it affected only a small number of non-determinative voters); see also *T & G Manufacturing, Inc.*, *supra*, at 1504 (directing the Regional Director to open and count two challenged ballots because the election should only be set aside if the improperly commingled ballot proved determinative).

Accordingly, this case is remanded to the Acting Regional Director for further appropriate action consistent with this Order, including resolution of the challenged ballots.

LAUREN McFERRAN, CHAIRMAN

JOHN F. RING, MEMBER

DAVID M. PROUTY, MEMBER

Dated, Washington, D.C., January 7, 2022.